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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 TYRA A. WILLIAMS,

12 Plaintiff,

14 vs.

15 MICHAEL J. ASTRUE, Commissioner of
16 Social Security,¹

17 Defendant.
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Case No. 12cv0852 BTM (KSC)

**ORDER SUA SPONTE
SUBSTITUTING DEFENDANT
PURSUANT TO FED.R.CIV.P. 25(d)
AND GRANTING PLAINTIFF'S
MOTION FOR APPOINTMENT OF
PRO BONO COUNSEL PURSUANT
TO 28 U.S.C. § 1915(e)(1)**

[ECF Doc. No. 14]

19 In this civil action, filed by Tyra Williams ("Plaintiff"), *in pro se* and pursuant to 42
20 U.S.C. § 405(g), Plaintiff appears to seek judicial review of the Commissioner of the Social
21 Security Administration's final decision regarding her claims for Disability Insurance
22 Benefits and Supplemental Security Income payments based on disability. *See* Compl. [ECF
23 Doc. No. 1]. On April 10, 2012, the Court granted Plaintiff leave to proceed *in forma*
24 *pauperis* pursuant to 28 U.S.C. § 1915(a), but denied her motion for appointment of counsel
25 without prejudice [ECF Doc. No. 4].

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28 ¹ On February, 14, 2013, Carolyn W. Colvin was appointed Acting Commissioner of the Social Security Administration in place of former Commissioner Michael J. Astrue. Pursuant to FED.R.CIV.P. 25(d), Colvin is hereby substituted for Astrue as the sole appropriate Defendant in this matter.

1 After Plaintiff failed to execute service of her Complaint despite an Order and
2 direction for accomplishing service via the U.S. Marshal pursuant to 28 U.S.C. § 1915(d) and
3 FED.R.CIV.P. 4(c)(3), the Court ordered the parties to appear on January 11, 2013, and an
4 Assistant U.S. Attorney entered a special appearance on behalf of Defendant for that hearing
5 [ECF Doc. Nos. 7, 8]. At the hearing, the Court determined that Plaintiff appeared truly
6 unable to proceed without counsel, suggested she re-submit a motion for appointment of
7 counsel, and re-directed the U.S. Marshal Service to execute service upon both the Civil
8 Division of the U.S. Attorney's Office for the Southern District of California and the
9 Attorney General of the United States pursuant to FED.R.CIV.P. 4(i) on her behalf [ECF Doc.
10 Nos. 9, 10]. On March 6, 2013, Plaintiff filed her renewed Motion for Appointment of
11 Counsel [ECF Doc. No. 14].

12 While there is no right to counsel in a civil action, a court may under "exceptional
13 circumstances" exercise its discretion and "request an attorney to represent any person unable
14 to afford counsel." 28 U.S.C. § 1915(e)(1); *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir.
15 2009). The court must consider both "the likelihood of success on the merits as well as the
16 ability of the [Plaintiff] to articulate his claims *pro se* in light of the complexity of the legal
17 issues involved.'" *Id.* (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)).

18 Applying these standards in light of Plaintiff's renewed request for counsel, and after
19 having had an opportunity to observe and question her during the January 11, 2013 status
20 hearing, the Court is now satisfied that Plaintiff is both sufficiently impoverished and unable
21 to both prosecute this matter and articulate her claims *in pro se*. *Id.* Thus, pursuant to
22 General Order 596, which adopted a Plan for the Representation of Pro Bono Litigation in
23 Civil Case filed in the Southern District of California and 28 U.S.C. § 1915(e)(1), the Court
24 has now, with the Assistance of the San Diego Volunteer Lawyer Program, identified and
25 selected volunteer counsel from the Court's Pro Bono Panel to represent Plaintiff during the
26 course of all further proceedings before this Court. *See* S.D. Cal. General Order No. 596.

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Conclusion and Order

Accordingly, the Court hereby:

- 1) Sua sponte SUBSTITUTES Carolyn W. Colvin, Acting Commissioner of the Social Security Administration, for Michael J. Astrue, as the sole appropriate Defendant in this matter pursuant to FED.R.CIV.P. 25(d); and
- 2) APPOINTS Krista Cabrera (lead counsel) and Jeremy Wooden, of Foley & Lardner, LLP, 402 W. Broadway, Suite 2100, San Diego, California, 92101-3542, as Pro Bono Counsel for Plaintiff.

Pursuant to S.D. CAL. CIVLR 83.3(g)(2), Pro Bono Counsel shall file, if possible within fourteen (14) days of this Order, a formal written Notice of Substitution of Attorney signed by both Plaintiff and her newly appointed counsel. Such substitution shall be considered approved by the Court upon filing, and Pro Bono Counsel shall thereafter be considered attorney of record for Plaintiff for all purposes during further proceedings before this Court. *See* S.D. CAL. CIVLR 83.3(g)(1), (2).

The Court further DIRECTS the Clerk of the Court to serve Ms. Cabrera with a copy of this Order at the address listed above upon filing. *See* S.D. CAL. CIVLR 83.3(f).

IT IS SO ORDERED.

DATED: May 1, 2013


BARRY TED MOSKOWITZ, Chief Judge
United States District Court